

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

ANTHONY LAWRENCE LAROCHE,)	
)	
Movant,)	
)	
v.)	Case No. CV409-005
)	CV407-054
)	[CR402-234]
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

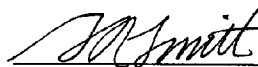
REPORT AND RECOMMENDATION

Anthony L. LaRoche's "mandamus" petition is styled in a way that caused the Clerk's office to open a new file (CV409-005). But it is in fact a successive § 2255 motion in disguise: he has already unsuccessfully litigated an earlier-filed § 2255 motion, and he has since been repeatedly warned that his Eleventh Circuit appeal will be imminently dismissed over his failure to pay the appellate filing fees. CV407-54, doc. 28. His response to such warnings has been simply to petition this Court for mandamus, which in substance will commence the § 2255 motion process all over again. CV409-005, doc. 1 (demanding that the U.S. Congress show cause why the gun legislation supporting LaRoche's conviction

should not be invalidated in light of recent Second Amendment jurisprudence, etc.).

Laroche's "mandamus petition" thus should be **DENIED** on the merits as facially frivolous, and also procedurally, as it is a successive § 2255 motion. *See United States v. Simmons*, 2008 WL 4920048 (S.D. Ga. Nov. 17, 2008) (unpublished) (§ 2255 motion, masquerading as a 18 U.S.C. § 3582(c)(2), "crack-wave motion," denied as successive). The Clerk therefore should be directed to enter this Report and Recommendation and the adopting order in CV407-054, CR402-234 and CV409-005, then **CLOSE** the CV409-005 file.

SO REPORTED AND RECOMMENDED this 30th day of January, 2009.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA